

B.P.

vs.

City of Johnson City, Tennessee, et al,

ERIC DAIGLE

June 10, 2024



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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

B.P., H.A., and S.H.,)
individually, and on behalf)
of all others similarly)
situated,)

Plaintiffs,)

v.)

City of Johnson City,)
Tennessee, et al,)

Defendants.)

No. 2:23-CV-00071
TRM-JEM

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VIDEO DEPOSITION OF ERIC DAIGLE
(VOLUME II)

August 20, 2024

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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JEFF RUSK COURT REPORTING & VIDEO

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1 that correct?

2 MR. LAKEY: Object to form.

3 A. Well, that's all I got. So that's
4 all -- I can't -- that was the totality of the data
5 set to my understanding.

6 Q. (BY MS. KRAMER) In other words, as
7 far as you know, for the time period January 2018 to
8 July 2022, the total number of sex-related crimes
9 that JCPD had a case number for was 326.

10 MR. LAKEY: Object to form.

11 A. That fit into these
12 classifications, yes.

13 Q. (BY MS. KRAMER) Understood.

14 Did you feel comfortable using 326
15 cases to do the assessment that you did that
16 resulted in your Audit of Sex-Related Crimes?

17 A. I did, and the good part is that,
18 you know, any audit is based on the volume of the
19 audit. Anybody who does an audit wants to have a
20 strong volume to be able to show -- you know, if
21 you're auditing two things, you've got a 50 percent
22 chance of failure. So the more cases that you can
23 audit, the more you can see patterns, which is
24 really what we look for when auditing.

25 And so specifically with the

1 forcible rapes and having 133 of those and -- you
2 know, it was the cornerstone of this audit and those
3 numbers in totality. Because, you know, the
4 statutory rape, the forcible fondling, you know,
5 those are, "Okay, what did we do?" But the real
6 issue on the table was the significant victim crimes
7 and the response to significant victim crimes.

8 So all of them are terrible. All
9 of them are crimes, but the lower level might not
10 need as much of an investigation as a forcible rape,
11 for example, that could have forensics involved in
12 it and, you know, different levels, additional
13 levels of investigation needed.

14 Q. In your experience as compared to
15 an assessment you may have performed for another
16 police department, would 326 cases be a number
17 you're comfortable with drawing conclusions from?

18 MR. LAKEY: Object to form.

19 A. I can't answer that, just because I
20 don't -- you know, I've done audits on different
21 things with less numbers, and I've done audits with
22 more numbers. You know, the number is the number.
23 That's what I have to work with. I don't really --
24 whether I like it or not doesn't matter. It's what
25 I've got. So I do think it's a number that will be

1 significant enough to show what I was looking for,
2 which was patterns.

3 And, for me, the purpose of the
4 audit is -- it's all -- it's not negative or
5 positive. It's just what happened. So I want to
6 make sure that when I'm doing an audit that I can
7 also give people credit for the things they do
8 right, along with identify things that they may fail
9 then. So a volume -- the bigger the volume and the
10 more significant the volume, obviously the better
11 you can go through and say, "Okay, well, they did it
12 right in these areas and they didn't do it right in
13 these areas." So I was -- I think it was
14 sufficient.

15 Q. (BY MS. KRAMER) You answered that
16 question much better than I asked it. Thank you.

17 How did you land on the time period
18 2018, January 2018 to July 2021?

19 A. That was a discussion with the City
20 in a couple of different realms. Number one, they
21 were looking at a specific time frame because of the
22 allegations in the Dahl complaint. And not --
23 that's not part of my world, but obviously I would
24 want to include those years in the assessment,
25 because the City was -- you know, Ms. Ball was

1 crimes and juvenile crimes.

2 And there's a very important need
3 to begin to understand some of the scientific
4 aspects of the psychological world as it applies to
5 victim interaction.

6 Q. The last bullet says -- or let's
7 start with the second to last bullet. It says,
8 "Impact of officers' attitude towards victim on
9 investigation outcomes."

10 Can you describe what that means?

11 A. Well, it's kind of similar to the
12 last bullet point, too, which is, you know, as I
13 talked about in the report, human beings have
14 biases. And whether they're explicit or implicit
15 biases, you know, whether it goes as far as, you
16 know, sexism and racism in an explicit bias or it's
17 just an implicit bias that they -- we have to -- we
18 have to make sure that we're training our officers
19 to understand their biases and to address their
20 biases.

21 They're human beings and so, you
22 know, biases affect attitude towards people and how
23 they respond to people. And it's something that we
24 take very seriously, and so we're going to train
25 them on it.

1 Q. And this specifically references
2 the impact on investigation outcomes.

3 Do you see that?

4 A. Yes.

5 Q. And what does that refer to?

6 A. Well, if you -- if you don't
7 believe the victim because of a bias or you don't
8 believe that what the victim is saying is credible
9 because of a bias, then you're going to affect the
10 whole outcome of the investigation. Because if the
11 investigator doesn't believe the victim, then
12 they're going to focus on evidence that is -- that's
13 going to support their biases, and there won't be a
14 full, fair, and unbiased investigation.

15 Q. In the last bullet point, I just
16 want to clarify that the use of LE there, is that
17 short for law enforcement?

18 A. Yes, ma'am.

19 Q. Okay. And you did review Johnson
20 City Police Department's training in the course of
21 your assessment, right?

22 A. We were able to review the types of
23 training that they received, the topics. They were
24 using an online system called Virtual Academy, which
25 I think is a Tennessee-based operation and is known

1 A. That's my term, but that's what we
2 use, ex-cleared, but it's exceptional means.

3 Q. And is that term, exceptional
4 means, is the source of that term from TIBRS?

5 A. It's for -- the short answer is
6 yes.

7 Q. Okay.

8 A. So you have to remember that each
9 of the state entities fit into a federal database.
10 So everybody's pretty consistent.

11 Q. Did anybody at Johnson City Police
12 Department -- strike that.

13 Did anybody from the City, in
14 connection with your assessment, provide to you a
15 written description of what it means to clear for
16 exceptional means?

17 MR. LAKEY: Object to form.

18 A. Yes, because it's on the -- it's on
19 the manual for TIBRS, which is -- I think I put
20 it -- I even put it in the report. In the initial
21 phase, it was -- I think it was sent by the sergeant
22 I was working with. And then I just went and pulled
23 the manual myself and started looking at the TIBRS
24 manual.

25 Q. (BY MS. KRAMER) And what was your

1 understanding of how JCPD investigators were using
2 the exceptional means code for case clearances?

3 MR. LAKEY: Object to form.

4 A. Not very consistently.

5 Q. (BY MS. KRAMER) Can you say more
6 about that?

7 A. It just -- you know, the challenge
8 was that there just wasn't consistency. So I
9 couldn't figure out, you know, how it should be used
10 correctly, right? And that's where I was drilling
11 down on when should -- what is TIBRS's view of how
12 it should be used correctly.

13 We just found, as you saw the
14 number of cases, that a large percentage of the
15 cases were being closed by exceptional means. And I
16 just wanted to make sure that they're being closed
17 correctly.

18 Q. Did you find JCPD officers had a
19 clear understanding of the correct use of clearing
20 by exceptional means?

21 MR. LAKEY: Object to form.

22 A. I can conclude that they did not,
23 because I couldn't get consistency in asking that
24 question.

25 Q. (BY MS. KRAMER) Did you ask whether

1 But when we get to the suspect, and
2 when we have an identified suspect, what was very --
3 I would just use the word intriguing to myself and
4 my team, who was experienced, was that we just
5 couldn't understand why you would not contact the
6 suspect since it is normal for criminal
7 investigators to, at least at some point, make
8 contact with the suspect and let them know they're
9 being alleged of a crime of such significance and
10 see if they're willing to talk to you.

11 You know, obviously, they have
12 their rights. They don't have to talk to you. But
13 my experience has been that individuals being
14 accused of such a crime are sometimes more often
15 willing to have a conversation with you, even with
16 an attorney, just because they want to get their
17 side on the record of what happened.

18 Q. (BY MS. KRAMER) You mentioned
19 earlier when we were talking about sex-based crimes
20 that there may be issues of credibility.

21 Would you agree that suspect
22 admissions or statements are going to be
23 particularly valuable in that context?

24 MR. LAKEY: Object to form.

25 A. I think -- I do agree that locking

1 in a suspect and locking in a witness is important
2 in the investigation, because everything that occurs
3 from that point on is going to be dealing with
4 credibility assessment.

5 Q. (BY MS. KRAMER) The report states
6 that during your interviews, "Investigators
7 confirmed that it was a practice at JCPD not to
8 contact the alleged suspect until they were
9 convinced that the assault reasonably did occur.
10 This is baffling to the DLG team."

11 Did I read that correctly?

12 A. You did, yes.

13 Q. Is baffling the word that you were
14 looking for before?

15 MR. LAKEY: Object to form.

16 A. I'll go with it.

17 Q. (BY MS. KRAMER) And what does it
18 mean -- what is your take on the fact that these
19 investigators needed to be convinced that the
20 assault reasonably did occur before they would
21 interview a suspect?

22 MR. LAKEY: Object to form.

23 A. Well, what do you mean by what does
24 it mean? I don't understand that.

25 Q. (BY MS. KRAMER) How do you evaluate

1 the only case that you reviewed relating to Sean
2 Williams?

3 A. It's my understanding there were
4 others. I don't know which ones they are without
5 going through the spreadsheet.

6 Q. Your audit did include more than
7 one case relating to Sean Williams?

8 A. I don't know as I sit here today.
9 This was the only one that was egregious that popped
10 up, you know, in the 300 -- my -- I want to say that
11 I was -- there's more out there, but I don't know of
12 them. This is the one that was egregious enough.
13 That was one of the examples. I used multiple cases
14 as examples in this report, and that was one of
15 them.

16 Q. And why was it so egregious, in
17 your view, to -- I think this example is one of
18 failure to secure a crime scene.

19 Why would it have been important
20 to -- I guess why is it important generally to
21 secure a crime scene?

22 A. I mean, based on if you just read
23 the report in and of itself, it makes no sense
24 whatsoever. Like any brand new rookie out of the
25 Academy should be able to look at this and say,

1 "Well, wait. Why? I don't understand."

2 You have a victim running out of a
3 building. Why didn't you secure a -- why didn't you
4 secure an apartment? Why didn't you get a
5 supervisor? Why didn't you -- why didn't you call a
6 detective? Why didn't you go upstairs and knock on
7 the door? I don't know if any of those things were
8 done.

9 I just know what's in the report,
10 and the report is very vague and not a lot of
11 information. And that's why it was brought out as
12 an example.

13 Q. And when you were reviewing this
14 case, do you -- there was no documentation of, for
15 example, collection of DNA.

16 A. Yeah. There's not much of anything
17 in this case documentation wise. So it's a pretty
18 straightforward -- you know, I was really focused
19 mainly as -- I use it as a suggestion in this case,
20 demonstrating that there was no crime scene
21 security. There was no processing. There was no
22 witness interviews. There was no nothing.

23 MS. KRAMER: Okay. Let's take a
24 short break. Let's do until 3:50 Eastern,
25 please.

1 have established the identity of at least one
2 offender. This means the agency knows at least one
3 offender's sex, race, age, ethnicity, and resident
4 status."

5 No. 2, "Sufficient probable cause
6 must have been developed to support the arrest,
7 charging, and prosecution of the offender."

8 No. 3 is, "The exact present
9 location of the offender must be known so that an
10 arrest could be made."

11 And No. 4 is, "There must be a
12 reason outside of law enforcement control preventing
13 offender's arrest. The valid reasons and
14 explanations are provided below."

15 Did I read that correctly?

16 A. Yes.

17 Q. Did you have any way to determine
18 whether a case closed by exceptional means by the
19 Johnson City Police Department met all four of the
20 conditions reflected here in Exhibit 116?

21 A. No, and that's why I had concerns
22 with the manner and mechanism of them closing these
23 cases by exceptional clearances. Often a lot of
24 this wasn't met.

25 By the way, just for the record,

1 there is -- this is just a snippet taken out of the
2 TIBRS Manual. There is a whole section in the TIBRS
3 Manual about exceptional clearances, which goes into
4 way more detail of what this all means and how.
5 Unfortunately, I spent way too much time trying to
6 figure it out.

7 But on its face, this is the rule.
8 But the TIBRS Manual actually has additional
9 information as to how to consider different things.

10 But the answer to your question is
11 a lot of times, in our review of the documents, the
12 elements were not in the document that led to a
13 conclusion or a close by an exceptional clearance.

14 Q. The portion of the TIBRS Data
15 Collection Manual that you see in Exhibit 116, this
16 is all that Johnson City provided to you; is that
17 correct?

18 A. Yeah, but I have Google.

19 Q. And then so you went and
20 independently found the other portions of the TIBRS
21 Data Collection Manual relating to exceptional
22 clearances; is that correct?

23 A. Yeah. I mean, as we talked about
24 today, it was a subject of all of my sit-downs with
25 people, because I was really trying to understand

1 the nuances which allows the investigators to close
2 it by this means.

3 Q. And is it your understanding
4 that -- let's take, for example, victim refused to
5 cooperate.

6 Is your -- is it your understanding
7 that if that's the clearance code, that for that to
8 be correctly used to close a case, all four of the
9 conditions identified in Exhibit 116 have to be met?

10 MR. LAKEY: Objection to form.

11 A. Yes, which is what makes it so
12 difficult to understand.

13 Q. (BY MS. KRAMER) And when you say
14 makes it so difficult to understand, what are you
15 referring to?

16 A. Well, basically what this
17 exceptional clearance is identifying is that it's
18 telling you you have all authority under the law --
19 sorry to you guys. I put my piece of paper up
20 there.

21 All authority under the law to
22 arrest the individual for the crime, but there is
23 something that's allowing a clearance of that. And
24 as I identified in my report, often that clearance
25 was lumped into either prosecution declined or

1 victim uncooperative without the justification to
2 support it.

3 You know, what does that mean?
4 It's just, "I had a conversation with the prosecutor
5 and they said drop it. Okay. Well, there's not
6 enough here to support that." And that was -- it is
7 very confusing. I'm going to tell you, we spent a
8 lot of time trying to understand how it works.

9 And I'll be honest with you, I
10 think you asked me this question before, I don't
11 think the Johnson City Police Department understands
12 how it works because of the -- because of the
13 inconsistencies that they had in the manner to close
14 it, so --

15 Q. But you agree it's their
16 responsibility to understand why they're closing a
17 case, correct?

18 MR. LAKEY: Objection to form.

19 A. Yes, because they have to submit it
20 to the State.

21 MS. KRAMER: Okay. I don't have
22 any more questions right now. I will
23 reserve the rest of my time for follow up.

24 And thank you very much for your
25 time today, Mr. Daigle.

1 A. In general. I mean, I ask
2 questions. What they tell me, they tell me.

3 Q. I mean, yeah.

4 I mean, so in essence here, and
5 maybe I'm oversimplifying it, but with regard to
6 your audit, you are looking at process issues and
7 you're reviewing investigation information, but
8 you're not making findings about any particular
9 investigation, that that investigation was good or
10 bad.

11 A. Correct. I'm identifying outliers
12 that help -- that led to our conclusion. And that
13 was very difficult in this case, too, because an
14 outlier is somebody's case.

15 Q. Yeah. Sure.

16 A. That's somebody -- that's a victim,
17 and we're -- you have to put outliers in there to
18 prove your point. But at the same point, you have
19 to keep in mind that there are real victims that may
20 be reading this report someday. It's not just the
21 town and the litigation, but it's -- it's victims.
22 It's people that have been victimized and people
23 have been accused. So there's both sides of that,
24 right? So I think you're --

25 Q. Yeah. I mean, I think it's -- I'm

1 A. No, because that's -- that's local.
2 It depends upon what services are available in the
3 area that the department has.

4 As I sit outside the sheriff's
5 department and I was investigating -- when I was
6 interviewing Lieutenant Dunn, there was all these
7 brochures on the wall for victims advocate services
8 and services that are available to victims.

9 At every police department,
10 officers carry with them and have knowledge of
11 victim services and for full -- for full range of
12 cases, domestic violence, child abuse, sexual
13 assault.

14 When a police department -- when a
15 police officer is meeting with a victim and an
16 investigator meets with a victim and they understand
17 victim methodology, they should at least offer the
18 victim the opportunity to speak to a non-police
19 personnel to make the correct decisions.

20 You could say to a victim, "Listen,
21 ma'am, I know you've been through a lot of trauma
22 right now, and I'm the last to add more trauma to
23 your plate. You may not want to deal with the
24 police. You may not know how to deal with me, but I
25 would ask you for an opportunity to just sit down

1 with -- or just let it -- let a -- let a victim
2 advocate or a psychologist meet with you for a
3 second, and then whatever you want to decide, that's
4 fine to do."

5 Human beings -- that's the process
6 that every victim-related crime in this country is
7 supposed to follow.

8 Q. Is there a national standard issued
9 by IACP, CALEA, or any other organization that
10 you're aware of that mandates that's what a police
11 law enforcement agency is supposed to do?

12 A. I don't know, because it's very
13 nuanced, but I would say that one of the challenges
14 is that there is no mandate for a department to have
15 that system. It's recommended, and most systems in
16 the country have recognized the failures of not
17 having that system and do have the system. And my
18 understanding is Tennessee has victim services
19 related to that.

20 Q. What police departments in -- and
21 again, are you -- let me just ask it a different
22 way.

23 Are you aware of any police
24 department in the state of Tennessee that when a
25 victim declines to -- declines to submit to an SAK,

1 says, "Ma'am, I'm going to get you an advocate or a
2 psychologist to talk to you"?

3 A. First of all, we never say it like
4 that, but I would -- I don't -- I did not -- I did
5 not assess any other department.

6 But the industry has focused in the
7 past two decades on victim-related services and the
8 importance of victim-related services in
9 victim-related crimes.

10 And if you go to IACP on a
11 national -- at their national conference every year,
12 more than half of the classes being offered are
13 classes specializing in victim and mental health
14 application. It's been a trend for two decades.

15 Q. Is it unusual for victims of sexual
16 assaults directly to convey to law enforcement that
17 they do not want to pursue prosecution of a suspect?

18 A. I don't know.

19 Q. Did that ever happen when you were
20 investigating sexual assaults?

21 A. It did not.

22 Q. In every -- so every single victim
23 you encountered of a sexual assault wanted to
24 prosecute?

25 A. No, they didn't want to prosecute.

1 But as a good investigator, working with them and
2 recognizing the significance of the incident and
3 giving them time to go through their trauma and
4 giving them the appropriate resources that they need
5 to -- you know, it's done in stages.

6 The first stage is, "Listen, you
7 don't have to make this decision right now. Let's
8 just go and get a sexual assault kit done, and then
9 we'll meet in a couple days and talk about it."
10 Like it's not a -- it's not, "Oh, this happened.
11 You have to sign on right now." It's a -- it's an
12 investigation. It takes a long time.

13 So you have to guide the victim
14 through the ups and downs that the victim is going
15 to go through, and most good investigators are going
16 to be very good at that. They're going to
17 understand that and also understand when they're not
18 good at it.

19 The fact that if I'm not making a
20 connection with this victim, maybe she just doesn't
21 want to talk to a male officer, I'm going to get a
22 female officer or vice versa. It's a skill set.
23 It's a -- it's a profession. There's no A equals B
24 in any of this.

25 I will tell you a lot of sexual

1 assault victims don't -- are fearful of being
2 victimized again in the courtroom, and so they don't
3 want to participate. But after a long process of
4 trust and understanding, they do. And some of them
5 don't.

6 Q. If a victim refuses to cooperate
7 with the investigation, do you agree that the case
8 may be closed?

9 A. If the victim signs a refusal, yes.

10 Q. You do?

11 Is that what you're calling the --
12 the what -- how did you phrase it?

13 A. Declination.

14 Q. Declination to --

15 A. That's a local thing for you. I
16 don't know. I think it was called a prosecutorial
17 declination or something like that. We just -- if
18 the -- if the -- the way that it would go, because
19 I've never seen that form. It's unique to your
20 area. But what we would do is we would just have
21 them fill out an affidavit and say, "I do no longer
22 wish to prosecute this case," and then have them
23 sign it under oath. That way, if it came back
24 later, we were protected.

25 Q. Right.

1 and of itself could be probable cause. So a victim
2 is alleging that she was sexually assaulted. That
3 is 52 percent. That's probable cause. The --
4 without a victim, you know, there -- the victim is
5 the key area to the sexual assault. I mean,
6 obviously you can get supporting documents -- you
7 can get supporting evidence through a sex kit or
8 through a crime scene, a forensic evaluation,
9 witness statements, but the victim is the key part
10 of the crime.

11 Q. Would you agree that it is
12 important for the police department to try to get as
13 thorough an interview from the victim as possible?

14 A. Absolutely. If not one, multiple.

15 Q. And that was going to be my next
16 question.

17 In order to complete the interview
18 process, it's not unusual for there to be more than
19 one interview of the victim.

20 A. Yeah. I mean, everybody puts the
21 interview in the static position of her coming in
22 and being interviewed. But if you are a victim in
23 my crime, we're going to have a lot of conversations
24 long before and after we have an actual interview
25 for the purposes of recording the evidence, right?

1 That's how you build a rapport.

2 That's how you -- that's how you, you know, try to
3 get the victim to be more confident with the police
4 and with the investigation. And that's -- that's
5 the one of the successes to making victims willing
6 to testify later on. It's relationship building.

7 **Q. And the interview process can be --**
8 **can and often should begin with the responding**
9 **officer; is that right?**

10 A. Well, sure. I mean, that's --
11 everybody that has interaction with her, including
12 the forensic nurses, the doctors, the crime scene
13 techs, everybody is building that -- that rapport of
14 trust in order to get her -- her or him to fully
15 participate in the process and feel safe in the
16 process.

17 **Q. But focusing on the responding**
18 **officer, under IACP guidelines it notes that the**
19 **responding officer is responsible for conducting the**
20 **initial preliminary interview.**

21 **Would you agree that would be**
22 **something you would expect and hope to see?**

23 A. Yes, and that would just be a --
24 you know, again, the words and the policy are
25 structured, but a preliminary interview would be,

1 "Hey, how are you? What happened? What can we get
2 you? Would you come with us to the hospital?" I
3 mean, that's a preliminary interview. It's not a
4 sit down and interview; that's just an interaction
5 with her. "What happened?"

6 Q. Depending on how much the victim
7 might want to share at that particular moment.

8 A. Sure.

9 Q. And in that preliminary interview,
10 by the responding officer, the responding officer
11 might tell the victim that a second interview might
12 be necessary, and probably will be necessary, to be
13 conducted by a trained investigator.

14 Would that be something that should
15 be conveyed to the victim?

16 A. We would call it a handoff. So the
17 job of the first responding officer is to begin the
18 rapport building and then hand off that rapport
19 building to the investigator who responds.

20 So basically you're going to be
21 with them. You walk them through the initial
22 phases, which could be the most damaging to them
23 because of, you know, what they've just been
24 through, and now you're going to go to the hospital
25 and, you know, it's a lot.

1 **detective in that interview?**

2 A. Well, if you follow the cognitive
3 interviewing theory for victim-dedicated interviews,
4 you are starting with just a general discussion of
5 what happened. You know, asking her or him to tell
6 you a story about that night, that evening, that
7 party, wherever they were. And you're allowing them
8 to give you a full version of events uninterrupted,
9 and you're asking them to focus on their
10 cognitive -- their cognitive interpretations of what
11 did they see, what did they hear, what did they
12 smell, what did they know.

13 And once you get the first version
14 of events out, you're going to need to go back
15 through and clarify very specific things. Obviously
16 the location. Obviously the identity of the alleged
17 accuser. Information specific to the alleged
18 accuser. Clothing. Tattoos. Marks. Anything that
19 would be unique to identify her to the -- to the
20 accuser that would help identify them. How they
21 knew him. What their relationship was. Where they
22 began to interact with each other.

23 You're looking for the location,
24 because you have a crime scene. You have physical
25 evidence. So, you know, where was it? You're

1 looking to ask questions about whether things were
2 laundered, clothing was laundered, undergarments
3 were laundered, sheets and towels, things were
4 laundered. If not, where are they? Where would
5 they be currently to be collected?

6 You're looking for witnesses,
7 people that may have been in the area that will
8 witness, you know, any parts of her story for
9 corroboration.

10 And then in today's world, you're
11 getting into electronic media, text messages, DM
12 messages, connection on social media.

13 You're looking for locations so
14 that you can connect the phone to Bluetooth in
15 a residence or Wi-Fi in a residence. You're looking
16 for, you know, technology that have on them so that
17 you can get CLSI information as to the towers and
18 the location.

19 So there's -- there's a lot here.
20 But it's all dependent upon the story that the
21 victim tells you. And then you just dive in to
22 start finding things that you can corroborate with
23 evidence.

24 Q. You ask the victim -- well, let me
25 ask this.

1 it's just not paying attention to the times, which
2 is, you know, every -- I would expect -- the
3 industry would expect departments to have different
4 types of rooms, if available; a soft room for
5 victims and for children and another interview room
6 for accused. And, you know, it's just a progression
7 of the knowledge, of experience, and the way that
8 things go.

9 Do I -- do I want the recording
10 over the handcuffs on the floor? I always want the
11 recording, but you could have just put a recorder on
12 the table. The handcuffs on the floor are not going
13 to help in the perception of the victim that she is
14 feeling supported in the process.

15 **Q. Do you know whether Johnson City**
16 **conducted victim interviews in those same rooms in**
17 **other types of crime like, for instance, aggravated**
18 **assaults?**

19 A. Well, I was told that they
20 conducted all of their interviews in that room. So
21 I'm going to have to conclude yes.

22 **Q. Interviews of murder victim's**
23 **families in those rooms?**

24 A. I would have to conclude. They
25 don't have any other room. So that's a good start.

1 A. So you're saying the word
2 interview, but let's take a -- you know, one of the
3 cases, as we all have talked about over and over
4 again, the female running out of the house. You
5 know, what prevents the officer from going and
6 knocking on the door and saying, "What's going on
7 here? Why did this just happen?" That's -- it
8 doesn't have to be a -- it doesn't have to be a
9 sit-down, "Did you do it" interview. But there is
10 nothing preventing you from contacting someone
11 accused of sexual assault in the early stages of the
12 investigation.

13 In fact, I don't know that I would
14 ever do a sexual assault, unless there was some real
15 crisis issue going that would prevent -- because of
16 the possible harm or threat to the victim, where I
17 wouldn't reach out to the victim right away -- with
18 the accused and say, "Hey, we just got a complaint.
19 You're alleged to do X. Do you want to talk about
20 it?" What's -- what's the harm in that? What's
21 the -- there is none.

22 Q. Well, do you believe that sometimes
23 it's better for the suspect to not know that he or
24 she is a target of a criminal investigation?

25 A. It's possible. Like I said, in the

1 situations I talked about, which is where there's a
2 threat to harm to the victim, that might be possible
3 because you don't want retaliation.

4 But I'm also like the -- I also
5 like surprise. And as investigators, we work on the
6 element of surprise often. And when you knock on
7 the door of somebody's house, it's the ultimate --
8 it's the ultimate surprise. And you can read
9 physiological responses and body language and you
10 can -- you can start to let them know.

11 And you're going to get a true
12 reactionary response from the suspect at that time.
13 If it was a -- if it was a situation where he
14 doesn't believe it's true, he's going to tell you
15 right then and there. And if not, you're going to
16 read the reactionary response, and he's going to
17 give you a -- he's going to give you a statement as
18 to why he thinks she said that. Those are all great
19 investigative tools to be right at the beginning of
20 your investigation.

21 **Q. So you believe that contact between**
22 **either the responding officer or the investigator**
23 **should occur immediately after the report of a**
24 **sexual assault.**

25 **A. Unless there's a mitigating factor,**

1 I think it's necessary because everything stems from
2 that. Crime scene security. Search warrants.
3 Crime scene processing. All of that stems from the
4 contact with the suspect. You can't get any of
5 those without your initial contact, and you're going
6 to want all of that so that you can put it in a
7 search warrant affidavit. So, yeah, I think unless
8 there's mitigating circumstances, which do occur, I
9 think it's an important step.

10 **Q. Do you know investigators or**
11 **persons who investigate crime who believe otherwise,**
12 **that you should have more information before you try**
13 **to interview the suspect the first time?**

14 **A.** All of the guys and gals that I've
15 worked with over the years and have interacted with,
16 that was the way we did business, unless there was a
17 mitigating circumstance.

18 I mean, there are -- there are
19 mitigating circumstances, but unless there was a
20 reason not, you know, we're going to be -- we're
21 going to be hitting this guy's house with a search
22 warrant in a -- if there's alleged acts of sexual
23 assault occurring in the house, we're going to want
24 to get in that house and secure it as soon as
25 possible. So we have to make contact with them.

1 Q. Is a mitigating circumstance that a
2 victim has reported what happened but said she
3 doesn't want to move forward with the investigation
4 or the prosecution?

5 Is a mitigating factor being
6 concerned about them confronting the suspect?

7 A. I don't know. It's possible. I
8 don't know.

9 Q. Okay. One of the mitigating
10 factors I think you mentioned is being concerned
11 that it might put the victim into harm's way.

12 A. Yep.

13 Q. Any other mitigating factors?

14 A. Well, you gotta remember, the one
15 thing that's clear is we have to balance the
16 mitigating factor with the loss of evidence. You
17 know, DNA evidence, physiological evidence does not
18 last long. Sperm. Blood. Hairs. Feces. That
19 stuff does not last long.

20 So it is literally important to --
21 if somebody -- if a victim says, "I was in this
22 house at this time and this happened," your window
23 of opportunity is very limited. So you're going
24 to -- you're going to have to get in there, and
25 you're going to have to make contact with the

1 suspect to get in there.

2 Q. Do you try to go get to a judge and
3 get a search warrant when the victim says, "I don't
4 want to prosecute, I don't want to pursue this"?

5 Do you think you can get a search
6 warrant?

7 A. Yeah, I think you can, because you
8 have a complaint, you know. So the challenge is I
9 don't see too many victims, and I haven't -- even in
10 your investigative reports, I don't see in City of
11 Johnson, I didn't see a lot of victims who reported
12 it and then recanted it within five minutes. They
13 reported and recanted a period of time down the
14 road -- or not recanted, but say, "I don't want to
15 prosecute."

16 That's a big difference from --
17 they did report it. So once you have that report,
18 now you have to do an investigation. And most
19 victims don't report it and say, "I don't want to
20 prosecute" the minute the cop walks up. They give a
21 version of events. The investigation begins, and
22 then along the way the victim decides or is asked by
23 an officer, "Are you willing to go through
24 prosecution?" They say, "No." So to put that at
25 the beginning is just -- it's inaccurate.

1 be issued under the McCarthy Rule. So the law
2 allows us to secure the house for the prevention of
3 destruction of evidence. So if we knock on his door
4 and he -- whether he talks to us or not, that house
5 is going to get secured, and he's not going to have
6 the ability to go in for a reasonable time while we
7 go and apply for a search warrant.

8 **Q. How about the time to develop**
9 **alibis? Is that a concern?**

10 A. Well, it's alibi development. I
11 mean, I guess it could be.

12 **Q. Threaten the victim, is that a**
13 **concern?**

14 A. Well, no, because you're going to
15 get charged with more crimes if you do that. And so
16 I want to call him. I want to talk to him directly
17 and tell him that he shouldn't do that, because
18 you're going to get charged with more crimes if you
19 do that.

20 **Q. But you also explained earlier that**
21 **a mitigating factor might be not wanting to put the**
22 **victim in harm's way.**

23 A. Yeah. Like if you look at the
24 history and the individual has tried to, you know,
25 commit harm to an individual, you know, you just --

1 you're talking in generalities and the difficulty is
2 we don't know. There is a situation where we
3 cannot -- we have to be concerned about threat
4 assessment and maybe getting the victim relocated
5 for a period of time before we contact the victim,
6 but -- before we contact the accused, but that's --
7 you know, that is just a mitigating factor. It
8 doesn't happen very often.

9 **Q. It's the particulars of the actual**
10 **investigation matter, the details of the**
11 **investigation matter for making those**
12 **determinations, right?**

13 A. Yes.

14 **Q. And you -- I think you said in your**
15 **prior portion of your deposition that the timing of**
16 **when a suspect is interviewed is something you**
17 **typically would leave to the discretion of an**
18 **investigator.**

19 A. Yes, but I would have already
20 expected that there would be -- you know, depending
21 on the involvement of the investigator, how quickly
22 the investigator gets involved, the securing of
23 evidence by the initial responders may also involve
24 interaction with the suspect, right? If a lady
25 comes running out of a house and says, "I was just

1 sexually assaulted," well, we have to go knock on
2 that door and secure that house until the
3 investigators show up.

4 Q. What if the -- what if that woman
5 then gets in a car and leaves the scene and won't
6 provide any additional information?

7 A. Well, you can't do that in a
8 hypothetical, because I don't know what she's
9 already told. Has she -- has she identified the
10 suspect? Has she identified the room? Has she
11 identified the act? Has she -- you know, what do we
12 have? Like the facts matter.

13 Q. Yeah. Right, they do.

14 A. So in a hypothetical, I can't
15 answer that question.

16 Q. And with regard to that particular
17 situation you're referring to, the facts that you
18 have is what you saw in the paperwork that you
19 received to review.

20 You didn't have an opportunity to
21 talk to any of the officers on the scene, right?

22 A. Oh, for that one incident? No, I
23 did not.

24 Q. I realize your prior testimony on
25 this issue is that it's important to build a rapport

1 with the victim to try to get the victim to want to
2 participate in the investigation of a sexual assault
3 investigation.

4 But ultimately, I presume you agree
5 that how much a victim wants to cooperate in an
6 investigation is up to them.

7 A. Yeah, that's fair.

8 Q. Victims cannot be compelled by law
9 enforcement to cooperate in the investigation of
10 their allegation.

11 A. You can't be made to cooperate.

12 Q. Yes, and you shouldn't -- you
13 shouldn't be.

14 A. Well, you know, that's not true all
15 the time. Children, individuals that are
16 incapacitated, you might have to -- you might have
17 to do more compelling than you would in a normal,
18 you know, he said/she said adult interaction.

19 Q. You might have a legal obligation
20 to pursue the investigation, but you're not going to
21 certainly compel that child to provide information
22 that the child doesn't want to provide.

23 You might work with them, but
24 you're not --

25 A. I mean, you use the word compel,

1 but that's not the way this works. We don't compel
2 anybody to do anything. If the person feels safe
3 and the person feels that you're treating them with
4 respect, I don't -- I mean, there are times where a
5 victim might not talk to you, but everybody will
6 talk to you in that situation.

7 They may say to you, "I don't want
8 to do anything about this," but if you are treating
9 them as an experienced investigator with skill sets
10 of talking to people and treating them fairly, you
11 can have an open and honest discussion about the
12 case.

13 **Q. With all respect, the last time you**
14 **investigated a sexual assault or a rape was in**
15 **the -- was 20 years ago, I think is how you're going**
16 **to put it, right?**

17 A. I agree, but I investigate things
18 all the time.

19 **Q. Right.**

20 **And when is the last time you**
21 **investigated a rape?**

22 A. Over 20 years ago.

23 **Q. Okay. And so --**

24 A. But, counsel, I don't get to sit
25 here today with my industry experience where we

1 train these people how to do it. The concepts that
2 you're talking about is that it is a -- it is a --
3 it is that you're talking about a concept that
4 you're taking out the humanization of these
5 investigations. That has been a skill set. That
6 doesn't change.

7 I don't care whether you
8 investigated it 30 years ago, the ability to treat
9 people with respect so they talk to you is a skill
10 set that can overcome a lot of barriers with
11 victims.

12 Q. Do you have any data that would
13 support an argument that if you just do a
14 victim-centric approach, every woman of rape is
15 going to want to pursue prosecution and cooperate
16 with the investigation?

17 A. I do not.

18 Q. Of course, that's impossible to
19 say, because it's going to depend on the victim; is
20 that right?

21 A. It's going to depend on a lot of
22 things.

23 Q. Including the victim.

24 A. Including the victim, yes.

25 Q. And just like the victim can't be

1 A. Yes, but I think the challenge is
2 when they happen.

3 Q. The timing of those
4 conversations --

5 A. Yes.

6 Q. -- relative to what stage of the
7 investigation.

8 A. Yeah. I don't know that I'm going
9 to bring a victim in and tell her right away, "Oh,
10 you know, it's not going to go well for you on the
11 stand." And I'm going to -- I'm going to want to
12 investigate the case, find -- get all my evidence,
13 put it all together, and then come back and have a
14 real conversation with a victim advocate in the room
15 or somebody else, with their family members in the
16 room and say, "Okay. Here's where we're at. This
17 is what we're ready to do. Are you ready?"

18 Q. Yeah. I mean, because, you know,
19 for instance, in IACP one thing that is discussed is
20 officers explaining to victims the limits of
21 confidentiality, possible media coverage,
22 information regarding sexual assault crimes being
23 available to the media. Those are conversations
24 that had to be had. Your point is it's about when
25 you have it.

1 A. About when you have it. You
2 shouldn't start out with that conversation. It
3 would be bad investigative practice.

4 Q. When a victim is waffling about or
5 deciding about whether to continue an investigation,
6 it is important to let them know that if they change
7 their mind, they can come back in to the police
8 department, isn't it?

9 A. Yeah, and it's also not only that,
10 you know, in the world of the new generation, it's
11 not unusual for victims to ghost you. And it's a --
12 that's a young kid term to go -- you know, to
13 disappear on you. And really that comes back with
14 how open the victim feels communicating with you.
15 And if they feel open, then you could have real
16 communication, but that's the -- yes. The short
17 answer is yes.

18 Q. With regard to -- on Page 22, with
19 regard to Points 1, 2 and 3 numbered paragraphs, do
20 you see that?

21 A. I do.

22 Q. With regard to those points, those
23 things are not unique to Johnson City -- as far as
24 you know, to Johnson City's investigation of sexual
25 assaults. Those hold true to their investigation --

1 at least during this period, their investigation of
2 aggravated assaults.

3 A. I can assume so. I didn't read
4 those reports. So I don't know if they required the
5 victims to come in or they wouldn't take the case.
6 I don't know if they required only interviews to be
7 conducted at the police department, or they -- and I
8 assume they use those interview rooms, but I don't
9 know.

10 Q. And in fairness, you weren't asked
11 to come in and take a look at whether they were
12 investigating sexual assault allegations different
13 than they were other major crimes.

14 A. No.

15 Q. So you did not do that as part of
16 your review.

17 A. No.

18 Q. So in addition to IACP and the
19 Tennessee Association of Chief of Police 6.7, which
20 I think is related to sexual assault investigations,
21 the policy suggests that victims need to be advised
22 of the steps they'll have to undergo as part -- have
23 to undergo as part of the investigation, including
24 in-depth interviews with specific and personal
25 questions, right?

1 **And that actually happens in the**
2 **initial interview, right?**

3 A. Yeah. I mean, the way I would
4 train investigators to do it would be come in, have
5 a conversation with them, you know, focus that, and
6 then -- you know, and then as -- once I have all the
7 evidence down, let's have a real conversation with
8 them and say, "Okay. I want to let you know the
9 steps that we're going to take here. We're going
10 to, you know, seize your clothing. We're going
11 to -- you know, we're going to take pictures of your
12 injuries, your bruises. We're going to contact the
13 suspect. We're going to attempt -- we're going to
14 submit all this to the prosecutor's office for
15 review." And so, you know, it's really just setting
16 expectations.

17 **Q. Right.**

18 **And so that conversation that you**
19 **just described has to be done -- it would have to be**
20 **done fairly early on. If you want to take pictures**
21 **of the bruises, you're going to talk about**
22 **submitting to a medical examination, all of that has**
23 **to occur on the front end.**

24 A. Yeah. I mean, you might not get
25 the first two done before like -- because oftentimes

1 it takes investigators time to get out to the scene.
2 So the sexual assault kit may already be done.

3 But when I'm taking -- when I would
4 recommend to investigators is when they're taking an
5 in-depth interview, once they have that interaction,
6 that's your opportunity to explain the process to
7 the victim.

8 Q. In looking at your deposition, your
9 prior deposition about potential basis for why --
10 for gender bias in investigations, one thing you
11 started to talk about was Deborah Dunn, but it
12 seemed like you certainly didn't finish that.

13 Would it surprise you to learn that
14 Deborah Dunn denied ever witnessing gender bias in
15 how JCPD investigated sexual assault allegations in
16 her deposition?

17 A. It would, yes.

18 Q. And do you have anywhere in your
19 notes with -- do you have anywhere in the notes with
20 your interview of Dunn where she told you that she
21 witnessed gender bias in how JCPD investigated
22 sexual assaults?

23 A. I think we've been through that. I
24 don't think there is.

25 Q. Okay.